



Gordon Ramsay MLA

Attorney-General
Minister for the Arts, Creative Industries and
Cultural Events
Minister for Building Quality Improvement
Minister for Business and Regulatory Services
Minister for Seniors and Veterans
Member for Ginninderra

The Hon Christian Porter MP
Attorney-General
PO Box 6922
House of Representatives
Parliament House
CANBERRA ACT 2600

Christian
Dear Attorney-General

I write in relation to the recently notified *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2018* (ACT) (the Act). Please find enclosed a copy of the Act as notified.

As I indicated to you in my letter of 26 September 2019, the ACT Government consulted broadly and comprehensively in relation to the reforms across the ACT Government, with the Commonwealth and ACT Directors of Public Prosecutions, and with ACT Policing and the Australian Federal Police.

In addition, as a result of referral from the ACT Legislative Assembly, the Act was the subject of an inquiry by the Standing Committee on Health, Ageing and Community Services. Their report was published on 6 June 2019 and can be found at: www.parliament.act.gov.au/in-committees/recent-reports.

During development of the Act, consideration was given to important issues such as the need to maintain a differentiation between artificial cultivation and non-artificial cultivation, restricting the possession of cannabis by young people, and ensuring young people are not exposed to cannabis or cannabis smoke.

The ACT Government does not condone or encourage the recreational use of cannabis, and this is a message that our Government will continue to actively send to the community. It is important to note that this legislation is not revolutionary and is instead a significant and important step away from needless criminalisation. It is a well-considered move towards achieving better outcomes for existing users by encouraging treatment and support when they need it.

ACT Legislative Assembly

London Circuit, Canberra ACT 2601, Australia GPO Box 1020, Canberra ACT 2601, Australia
Phone +61 2 6205 2615 Email ramsay@act.gov.au



@Gordon_R_Ramsay



Gordon Ramsay MLA




The Act is largely consistent with the existing scheme of decriminalisation of personal use of small amounts of cannabis. It maintains an ACT-specific legal framework for dealing with cannabis possession. As you are aware, an adult who possesses a small amount of cannabis in the ACT (provided the amount is no greater than the amount allowed for in the Act) who is prosecuted for an offence under section 308.1(1) of the Commonwealth *Criminal Code 1995* (Cth) can rely on 313.2 of the Code as a defence. This is a clear and precise defence as provided for by the Commonwealth law, and the ACT provisions sit alongside the Code without conflict. Similarly, section 313.1 provides that the offence in section 308.1(1) does not apply to conduct that is 'justified or excused' by or under a law of the State or Territory in which the conduct occurs. In effect, this provision acts to disapply the Code in the circumstances outlined in the Act.

This approach balances accountability to the law and community safety, and I trust that the time and resources of our federal police and courts will not be wasted pursuing individual cannabis users who are acting in accordance with ACT law.

The Act has been passed by the ACT Legislative Assembly as a self-governing body with the authority to make laws for people of the ACT. I reiterate my previous advice that this legislation expresses the will of the ACT people and convey my deep concern should the Commonwealth seek in any way to overrule and intervene in the democratic processes of the ACT.

I appreciate your interest in this matter.

Yours sincerely



Gordon Ramsay MLA/
Attorney-General

Encl.

14 OCT 2019



Australian Capital Territory

Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019

A2019-34

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Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Australian Capital Territory

Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019

A2019-34

An Act to amend the *Drugs of Dependence Act 1989*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019*.

2 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

- (2) However, the Minister must not fix a commencement day that is before the notification day of the guidance material required to be published under section 171BA.

- (3) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Legislation amended

This Act amends the *Drugs of Dependence Act 1989*.

Note This Act also amends other legislation (see sch 1).

4 Offences against Act—application of Criminal Code etc Section 4, note 1

substitute

Note 1 Criminal Code

The [Criminal Code](#), ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 162 (Cultivation of 1 or 2 cannabis plants)
- s 171 (Possessing prohibited substances)
- s 171AA (Possessing cannabis)
- s 171AAA (Cultivation of more than 4 cannabis plants at premises)
- s 171AAB (Cannabis plant cultivation—other offences)
- s 171AAC (Storage of cannabis)
- s 171AB (Smoking cannabis in public place or near child).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

5 Cultivation of 1 or 2 cannabis plants New section 162 (1A)

insert

(1A) This section does not apply if the person—

- (a) is 18 years old or older; and
- (b) cultivates the plants in the ACT.

Note The defendant has an evidential burden in relation to the matters mentioned in s (1A) (see [Criminal Code](#), s 58).

6 Section 171

substitute

171 Possessing prohibited substances

- (1) A person commits an offence if the person possesses a prohibited substance.

Maximum penalty: 50 penalty units, imprisonment for 2 years or both.

- (2) Subsection (1) does not apply if the person is authorised under the *Medicines, Poisons and Therapeutic Goods Act 2008*, or another territory law, to possess the prohibited substance.

- (3) In this section:

prohibited substance does not include cannabis.

171AA Possessing cannabis

- (1) A person commits an offence if the person possesses—

- (a) 50g or less of dried cannabis; or
- (b) 150g or less of cannabis that has been harvested and—
 - (i) is not dried cannabis; or
 - (ii) is a mixture of dried cannabis and cannabis that is not dried cannabis.

Maximum penalty: 1 penalty unit.

- (2) A person commits an offence if the person possesses—

- (a) more than 50g of dried cannabis; or
- (b) more than 150g of cannabis that has been harvested and—
 - (i) is not dried cannabis; or

- (ii) is a mixture of dried cannabis and cannabis that is not dried cannabis.

Maximum penalty: 50 penalty units, imprisonment for 2 years or both.

- (3) Subsection (1) does not apply if the person—
 - (a) is 18 years old or older; and
 - (b) possesses the cannabis in the ACT.
- (4) Subsections (1) and (2) do not apply if the person is authorised under the *Medicines, Poisons and Therapeutic Goods Act 2008*, or another territory law, to possess the cannabis.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) and s (4) (see *Criminal Code*, s 58).

- (5) In this section:

dried cannabis means cannabis that has been subjected to a drying process.

171AAA Cultivation of more than 4 cannabis plants at premises

- (1) A person commits an offence if—
 - (a) the person cultivates a cannabis plant at premises; and
 - (b) more than 4 cannabis plants are being cultivated at the premises.

Maximum penalty: 50 penalty units, imprisonment for 2 years or both.

- (2) Strict liability applies to subsection (1) (b).
- (3) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant—
 - (a) lived at the premises when cultivating the cannabis; and

- (b) was not aware, and could not reasonably have been expected to be aware, that more than 4 cannabis plants were being cultivated at the premises.

Note The defendant has a legal burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 59).

171AAB Cannabis plant cultivation—other offences

- (1) A person commits an offence if—
 - (a) the person cultivates a cannabis plant; and
 - (b) the cannabis plant is cultivated at a place other than where the person lives.

Maximum penalty: 50 penalty units, imprisonment for 2 years or both.

- (2) A person commits an offence if—
 - (a) the person cultivates a cannabis plant; and
 - (b) the cannabis plant is cultivated in an area lawfully accessible to a member of the public.

Maximum penalty: 50 penalty units, imprisonment for 2 years or both.

171AAC Storage of cannabis

- (1) A person commits an offence if the person—
 - (a) possesses harvested cannabis; and
 - (b) does not store the cannabis out of reach of children.

Maximum penalty: 50 penalty units, imprisonment for 2 years or both.

- (2) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant took all reasonable steps to ensure that a child could not access the cannabis.

Note The defendant has a legal burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 59).

7 Offence notices

Section 171A (7), definition of *simple cannabis offence*

substitute

simple cannabis offence means—

- (a) an offence against section 162 (Cultivation of 1 or 2 cannabis plants); or

Note Section 162 does not include artificial cultivation of cannabis plants.

- (b) an offence against section 171AA (1).

8 New section 171AB

before section 171B, insert

171AB Smoking cannabis in public place or near child

- (1) A person commits an offence if the person smokes cannabis in a public place.

Maximum penalty: 30 penalty units.

- (2) A person commits an offence if—

- (a) the person smokes cannabis; and
(b) a child is exposed to smoke or vapour from the cannabis the person is smoking.

Maximum penalty: 30 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that the defendant—

- (a) took all reasonable steps to ensure that the child was not exposed to the smoke or vapour; or
- (b) believed on reasonable grounds that the child was 18 years old or older.

Note The defendant has a legal burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 59).

- (4) In this section:

personal vaporiser—see the [Tobacco and Other Smoking Products Act 1927](#), section 3B.

public place—see the [Smoke-Free Public Places Act 2003](#), dictionary.

smoke cannabis means—

- (a) to directly puff smoke, or vapour, from cannabis, or a product that contains cannabis, whether or not a device for the inhalation of smoke, or vapour, is used; or
- (b) to hold or to have control over—
 - (i) cannabis, or a product that contains cannabis, while it is ignited; or
 - (ii) a personal vaporiser that contains cannabis and that is activated.

Examples—devices—par (a)

- a personal vaporiser
- a pipe (including a hookah, water pipe or bong)
- a cigarette holder

9 New section 171BA

in part 10, insert

171BA Guidance material

- (1) The Minister must prepare and publish guidance material to inform the community about the legal and health implications of the amendments of this part made by the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019*.
- (2) The guidance material is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

10 New section 205A

insert

205A Review of certain amendments related to cannabis

- (1) The Minister must review the operation of the amendments of this Act made by the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019* as soon as practicable after the end of their 3rd year of operation.
- (2) The Minister must present a report of the review to the Legislative Assembly within 6 months after the day the review is started.
- (3) This section expires 5 years after the day it commences.

11 Dictionary, note 2

insert

- territory law

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Criminal Code 2002

[1.1] Sections 605 and 614, note

substitute

Note For additional offences relating to possessing controlled drugs, see the [Drugs of Dependence Act 1989](#), pt 10 and the [Medicines, Poisons and Therapeutic Goods Act 2008](#), s 36.

[1.2] New section 636A (3) (ba)

insert

(ba) that [Act](#), section 171AA; or

Part 1.2 Medicines, Poisons and Therapeutic Goods Act 2008

[1.3] New section 9A

in chapter 2, insert

9A Application of Act to certain cannabis use not prohibited under Drugs of Dependence Act 1989

- (1) The defined provisions of this Act do not apply to an adult to the extent that the substance is an amount of cannabis that the adult is not prohibited from cultivating or possessing under the [Drugs of Dependence Act 1989](#).

(2) In this section:

defined provisions of this Act means the following:

- (a) section 26 (2) (Supplying declared substances);
- (b) section 33 (Manufacturing regulated substances);
- (c) section 35 (1) (Obtaining certain declared substances);
- (d) section 36 (Possessing certain declared substances);
- (e) section 37 (2) (Administering certain declared substances).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 28 November 2018.

2 Notification

Notified under the [Legislation Act](#) on 10 October 2019.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2019, which originated in the Legislative Assembly as the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 and was passed by the Assembly on 25 September 2019.

Clerk of the Legislative Assembly

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Andrew Barr MLA

Chief Minister

Treasurer

Minister for Social Inclusion and Equality

Minister for Tertiary Education

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

The Hon Greg Hunt MP
Minister for Health
Parliament House
CANBERRA ACT 2600

Dear Minister ~~Hunt~~, ^{Greg}

Thank you for your letter about the recent legislation passed by the ACT Legislative Assembly that further decriminalises possession of small amounts of cannabis in the Australian Capital Territory.

The *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019* (ACT) removes criminal penalties for small scale cannabis possession by adults and permits possession of two cannabis plants on residential premises. The Act introduces offences prohibiting cannabis use around children and in public places. There has been no change to criminal penalties regarding cannabis supply, possession of trafficable amounts of cannabis and artificial cultivation of cannabis plants. This legislation is not revolutionary, it is a small step towards achieving better health and social outcomes for users by encouraging treatment and support instead of subjecting them to the criminal justice system.

The ACT Government does not condone or encourage the recreational use of cannabis or other drugs. This is a message we will continue to actively convey to the ACT community. The ACT Government does not dispute that cannabis use can have adverse effects on personal health and wellbeing.

It is the Government's view however that the outright prohibition of cannabis is of limited, and often negative, effect when seeking to reduce the harms caused by cannabis use. The Government's evidence-based approach to addressing harm caused by alcohol and other drugs is outlined in the *ACT Drug Strategy Action Plan*, which aligns with the Commonwealth's *National Drugs Strategy 2017-2026*. These strategies aim to achieve safe, healthy and resilient communities in accordance with the three pillars of harm minimisation: demand reduction, supply reduction and harm reduction.

ACT Legislative Assembly

London Circuit, Canberra ACT 2601, Australia

Phone +61 2 6205 0011

Fax +61 2 6205 0157

GPO Box 1020, Canberra ACT 2601, Australia

Email barr@act.gov.au



@ABarrMLA



AndrewBarrMLA



actchiefminister



Harm minimisation principles have informed the Government's approach to this reform. The health risks you have outlined, and which the Government is aware of, already exist for the 8.4% of Canberrans that have reported using cannabis in the previous 12 months. The change will assist cannabis users to reduce or stop their use of the drug by reducing stigma and the risk of punishment associated with criminal penalties for possession. Removing unnecessary and ineffective penalties creates opportunities to better reach people already using cannabis, to help connect them with the services and supports they need.

The ACT Government has examined legalisation and decriminalisation internationally and no clear causal link between the legal status of cannabis and usage patterns was observed. The European Monitoring Centre for Drugs and Drug Addiction concluded in 2018 there was no clear relationship between changes in cannabis possession penalties in the European Union and use rates in young people. The National Drug Strategy Household Survey indicates that 82% of Australians would not use Cannabis even if it was legal.

Additionally, the ACT Legislative Assembly's Health, Aging and Community Services Committee conducted an inquiry into the Bill. The Inquiry received a number of submissions from individuals, drug and alcohol services, legal organisations, and medical bodies. The Government considered the submissions of these groups in developing its amendments to the Bill and its strategy on addressing the health impacts of personal cannabis use. More information on the Inquiry can be found at www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-health,-ageing-and-community-services/

I hope the above has assisted in explaining the ACT Government's strategic and evidence-based approach in minimising the harm caused by cannabis. This legislation forms one aspect of that strategy. I note that ACT Attorney-General Gordon Ramsay has recently written to Attorney-General Porter to provide the Commonwealth with a final copy of the Act as notified, I have attached a copy of the Act to this letter as well.

Thank you for your interest in this matter.

Yours sincerely



Andrew Barr MLA
Chief Minister

14 OCT 2019

CC: Shane Rattenbury MLA, ACT Acting Minister for Health